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amend

38. (New) The method of claim 29, wherein said guyed tower has a bottom section, a top section, and at least one middle section between said bottom section and said top section, wherein said pole tower has a plurality of sections, and wherein said erecting step further comprise the steps of:

lifting each of said pole tower sections to said top section of said erected guyed tower; and
passing each of said pole tower sections through said top section of said erected guyed tower.

39. (New) The method of claim 38, wherein said attaching step comprises the step of fixedly attaching one of said pole tower sections to said foundation.

40. (New) The method of claim 38, wherein at least one other pole tower section extends above said top section subsequent to said erecting step.

REMARKS

This is a full and timely response to the non-final Office Action of November 15, 2002. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Second Response, claims 1-29 are pending in this application, and claims 30-40 are newly added via amendment. It is believed that the foregoing amendment adds no new matter to the present application.

Response to §103 Rejections

In order for a claim to be properly rejected under 35 U.S.C. §103, the combined teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). In addition, “(t)he PTO has the burden under section 103 to establish a *prima facie* case of obviousness.” *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988) (Citations omitted). Furthermore, the Federal Circuit has stated that “(i)t is impermissible, however, to simply engage in hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.” *In re Gorman*, 933 F.2d 982, 987, 18 U.S.P.Q.2d 1885 (1991).

Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Moore* (U.S. Patent No. 5,649,402) in view of *Pennell* (6,028,566). Claim 1 presently reads as follows:

1. A system for supporting wireless communication equipment, comprising:
a foundation;
a guyed tower fixedly attached to said foundation; and
a pole tower fixedly attached to said foundation and **extending through a middle region of said guyed tower**. (Emphasis added).

Applicant respectfully asserts that the alleged combination of *Moore* and *Pennell* fails to suggest or teach at least the features of pending claim 1 highlighted hereinabove.

In rejecting claim 1, it is asserted in the Office Action that:

“Moore teaches a self-supported tower, not a guyed tower surrounding the pole tower. However, guyed towers and self-supported towers are both conventional towers and are well known in the art to support antennas, as taught by Pennell (column 5, lines 27-35). Pennell indicates that self-supporting towers or guyed towers could be utilized in his invention. Guyed towers and self-supporting towers are considered functional equivalents in the art, therefore it would be obvious to one having ordinary skill in the art at the time the invention was made to use a guyed tower with Moore’s pole tower.”

Applicant respectfully traverses the assertion that it would have been obvious to “use a guyed tower with Moore’s pole tower,” as alleged in the Office Action. In this regard, “(t)he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992). Applicant asserts that the alleged modification of *Moore* is not properly based on teachings from the cited art but is rather based on impermissible hindsight reconstruction of Applicant’s invention.

In this regard, Applicant notes that there must not only be a suggestion to combine the functional or operational aspects of the combined references, but that the Federal Circuit also requires the prior art to suggest both the combination of elements and the structure resulting from the combination. *Stiftung v. Renishaw PLC*, 945 Fed.2d 1173 (Fed. Cir. 1991). Therefore, in order to sustain an obviousness rejection based upon a combination of any two or more prior art references, the cited art must properly suggest the desirability of utilizing the modified structure, and merely alleging that the modified structure is a “functional equivalent” of the structure described by a prior art reference is insufficient for establishing a *prima facie* case of obviousness.

To better illustrate the foregoing concepts, Applicant refers to *Continental Can Co., USA, Inc. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In that case, the claimed invention was directed to a ribbed bottom structure for reinforcing a plastic container. The patent in suit claimed that each container rib was hollow. The prior art consisted of several patents directed to ribbed configurations comprising the support structure of plastic container bottoms. The primary reference was a *Marcus* patent, which disclosed a plastic container having a ribbed bottom, wherein the ribs were solid. A *Pentaloid* patent was a secondary reference which, when inverted, closely resembled the claimed invention. The Federal Circuit, however, quickly dismissed this simple modification as constituting an obvious change by stating "(a)lthough a prior art device could have been turned upside down, that did not make the modification obvious unless the prior art fairly suggested the desirability of turning the device upside down." *Continental Can* at 1270.

Moreover, Applicant asserts that the Office Action fails to show that the cited art provides a motivation or desirability for replacing the self supporting tower of *Moore* with a guyed tower, as alleged in the Office Action. Thus, Applicant asserts that the Office Action fails to establish a *prima facie* case of obviousness and that the rejection of claim 1 is based on impermissible hindsight reconstruction of Applicant's invention.

Claims 2-10 and 30-33

Claim 2-10 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Further, claims 30-33 have been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 2-10 and 30-33 contain all features of their respective independent claim 1. Since claim 1 should be

allowed, as argued hereinabove, pending dependent claims 2-10 and 30-33 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 11

Claim 11 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 11 presently reads as follows:

11. A system for supporting wireless transmission equipment, comprising:
a foundation;
a guyed tower fixedly attached to said foundation; and
a means for absorbing bending moments that act on said guyed tower, said absorbing means fixedly attached to said foundation and extending through a middle region of said guyed tower. (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* and *Pennell* fails to suggest at least the features of claim 11 highlighted hereinabove. Accordingly, Applicant respectfully submits that the rejection of claim 11 is improper and should be withdrawn.

Claims 12-18

Claims 12-18 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Applicant submits that the pending dependent claims 12-18 contain all features of their respective independent claim 11. Since claim 11 should be allowed, as argued hereinabove, pending dependent claims 12-18 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 19

Claim 19 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 19 presently reads as follows:

19. A method for supporting wireless communication equipment, comprising the steps of:
erecting a guyed tower;
fixedly attaching said guyed tower to a foundation;
erecting a pole tower within a middle region of said guyed tower; and
fixedly attaching said pole tower to said foundation. (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* and *Pennell* fails to suggest at least the features of claim 19 highlighted hereinabove. Accordingly, Applicant respectfully submits that the rejection of claim 19 is improper and should be withdrawn.

Claim 20

Claim 20 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 20 recites the step of “erecting a pole tower within a middle region of said guyed tower.” For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* and *Pennell* fails to suggest such features. Accordingly, Applicant respectfully submits that the rejection of claim 20 is improper and should be withdrawn.

Claims 21-28, 34, and 35

Claims 21-28 presently stand rejected in the Office Action under 35 U.S.C. §103 as purportedly being unpatentable over *Moore* in view of *Pennell*. Further, claims 34 and 35 have

been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 21-28, 34, and 35 contain all features of their respective independent claim 20. Since claim 20 should be allowed, as argued hereinabove, pending dependent claims 21-28, 34, and 35 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 29

Claim 29 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 29 presently reads as follows:

29. A method for increasing a load capacity of an erected guyed tower, comprising the steps of:
erecting a pole tower within an inner region of said guyed tower; and attaching said pole tower to a foundation. (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* in view of *Pennell* fails to suggest at least the features of claim 29 highlighted hereinabove. Accordingly, Applicant respectfully submits that the cited art is insufficient for rejecting claim 29 under 35 U.S.C. §103.

Claims 36-40

Claims 36-40 have been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 36-40 contain all features of their respective independent claim 29. Since claim 29 should be allowed, as argued hereinabove, pending dependent claims 36-40 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).


CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted ,

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